

Erica L. Brachfeld [SB# 180683]
Jonathan W. Birdt [SB# 183908]
Jbirdt@brachfeldcollections.com
THE BRACHFELD LAW GROUP, P.C.
880 Apollo St. Suite 155
El Segundo, CA 90245
Telephone: (310) 273-7867
Facsimile: (310) 273-9867

Attorney for Defendant,
THE BRACHFELD LAW GROUP, P.C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DONNA GARCIA,

Plaintiff,

vs.

RESURGENT CAPITAL SERVICES, L.P.,
LVNV FUNDING, LLC, THE BRACHFELD
LAW GROUP, P.C. a.k.a BRACHFELD &
ASSOCIATES, P.C., and DOES 1-10,

Defendant

) Case No.: CV11-01253

) **OPPOSITION TO EX PARTE**
) **APPLICATION FOR ORDER**
) **SHORTENING TIME**

OPPOSITION TO EX PARTE APPLICATION FOR ORDER SHORTENING TIME

1 Brachfeld Law Group opposes this ex parte because it is premised on false
2 assertions of fact and law, is completely unnecessary and specifically on the
3 following grounds:

4 1. Counsel for Plaintiff represents to this court:

5 “Furthermore, a party’s F.R.C.P. 30(b)(6) corporate representative,
6 and/or officers, are considered to be a party witness. *Fausto v.*
7 *Credigy; and Creative Science Systems.*” Moving papers at page 3,
8 Lines 11-12.

9 This statement appears to be **completely false** and not supported by the
10 authorities cited to the extent it suggest a corporate representative, who is
11 not an officer, can be compelled to appear and is not a point discussed in
12 either opinion.

13 2. Counsel for Plaintiff represents to this court that:

14 Judge Ware stated in a 2009 Northern District trial opinion that FRCP
15 45 does not apply to a corporate officer of a defendant **nor a 30(b)(6)**
16 **witness of defendant’s.** *Fausto* at 4. Motion at Page 4, Lines 3-5.

17 Counsel for Defendant has been unable to find the language referred to
18 by counsel for Plaintiff, as bolded and underlined above.

19 3. Counsel for Plaintiff represents to this court that:

20 The Northern District of California has held party witnesses can be
21 compelled to appear live at trial. Motion at Page 5, Lines 16-17

22 Counsel for defendant has only been able to find authority for the
23 proposition that an officer can be ordered to appear, not an employee.

24 4. Plaintiffs’ counsel has not sought to meet and confer regarding this

25 motion or any request to shorten time, contrary to the representations
26 Plaintiffs’ counsel has made to this Court.

27 5. Plaintiffs only contact regarding this matter were a few informal emails

28 and then *ex parte* notice, and even therein, counsel for plaintiff was not
willing to provide the legal basis, saying only “you will see our papers”.

- 1 6. Erica Brachfeld is a corporate officer and thus subject to the Courts
2 power to compel her attendance and she agrees to comply with a notice
3 to appear and appear at trial, thus rendering any motion practice in this
4 regard unnecessary.
- 5 7. The Courts power to compel the attendance of a non-party is limited to
6 100 miles. FRCP 45. Jonathan Birdt is not a corporate officer and
7 testified via skype from Los Angeles as the corporate designee and will
8 likely be trial counsel, but a final decision has not been made and thus a
9 stipulation was not forthcoming.
- 10 8. Plaintiff asserts that a corporate designee becomes a party within the
11 scope of FRCP 45 and cites two cases, *Faust* and *Creative*, but neither
12 case supports this assertion. First Plaintiff cites “*Fausto v. Credigy*, 2009
13 U.S. Dist. Lexis 51079” but that order related to a Corporate officer, not
14 an employee, contrary to the assertion of counsel. Again, there is no
15 dispute a corporate officer can be compelled to attend the trial.
16 Plaintiffs’ counsel also cites *Stone v. Morton Intern., Inc.*, 170 F.R.D.
17 498, 500 (D. Utah 1997) which again relates solely a corporate officer,
18 not a 30(b)(6) witness.
- 19 9. Based upon the foregoing, there has been no meet and confer, no request
20 to shorten time, the motion itself is not necessary as Counsel would
21 stipulate as to the Corporate officers and the argument that a 30(b)(6)
22 witness can be compelled to attend is not supported by any legal
23 authority.
24

25 Date: April 19, 2012

Respectfully Submitted,

26
27 By: /s/ Jonathan W. Birdt
Jonathan W. Birdt, Esq. (SBN. 183908)
28